IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7608 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHOBHABEN MAHESHBHAI DOCTOR PROPRIETOR OF

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7608 of 2004

MR PT JASANI for Petitioner No. 1

MR PRADIP D BHATE, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 22/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the

legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Nadiad / Collector of Stamps, Nadiad dated 9.4.1997, by which, respondent No.2 in exercise of the powers conferred upon him under Section 32-A of the Bombay Stamps Act, 1958 ("the Act" for short) has passed the order directing the petitioner to pay the amount of Rs.7,21,080/- by way of deficit stamp duty and Rs.250/- by way of penalty with regard to the document No.3367 of 1991.

#. The property in question came to be purchased by the petitioner by registered sale deed in 1997 which was presented before the Sub-Registrar, Anand and was registered as registration No.3376/91. It appears that the Sub-Registrar, Anand was of the opinion that the property in question is not properly valued and/or it is under valued and the proper stamp duty is not paid and he referred the document to respondent no.2 for excercising the powers under Section 32-A of the Act for determining true and correct market value. Notice under Rule 4 of the Market Values Rules ("the Rules" for short) came to be issued in 1994. It appears that the petitioner did not remain present and/or did not file any reply and accordingly respondent No.2 passed the impugned order on 9.4.1997 determining the market value of the property in question at Rs.77,10,800/- thereby directing the petitioner to pay additional stamp duty of Rs.7,21,080/and Rs.250/- by way of penalty. It is the case of the petitioner that the petitioner had preferred the appeal before respondent No.1 - Chief Controlling Revenue Authority, but the same was not decided and in the meantime, attachment notice came to be issued by respondent No.3, and, therefore, the present special civil application has been filed.

#. Learned advocate appearing on behalf of the petitioner is absent.

#. Considering the grounds stated in the memo of the petition and also the impugned order dated 9.4.1997, it appears to the Court that the impugned order dated 9.4.1997 is non-speaking order. It is true that the petitioner did not appear and did not file any reply, but still respondent No.2 was required to state reasons and/or evidence upon which reliance has been placed fixing the market value of the property in question at Rs.77,10,800/-. From the bare reading of the impugned order dated 9.4.1997, it is clear that the said order is non-speaking order and there is no discussion with regard to any evidence and there is no basis mentioned as to on what basis the market value has been fixed at

Rs.77,10,800/-. It appears from the memo of the petition that, it is the contention of the petitioner that the petitioner has purchased the property in question by public auction from Umreth Urban Cooperative Bank Limited being the highest bidder, and, therefore, considering the circular issued by the State Government, when the property is purchased by the petitioner in a public auction by the bank, proceedings under Section 32-A of the Act cannot be initiated.

#. Without considering the aforesaid aspect whether the power can be exercised by respondent No.2 under Section 32-A of the Act or not, in view of the fact that the impugned order dated 9.4.1997 is non-speaking order and there is no discussion and/or basis mentioned determining the market value of the property in question at Rs.77,10,800/-, the same is required to be quashed and set aside by remanding the matter to respondent No.2 for passing the fresh order on its own merits and in accordance with law after giving opportunity to the petitioner.

#. For the reasons stated above, the impugned order dated 9.4.1997 passed by respondent No.2 with regard to document No.3367/91, Anand is hereby quashed and set aside. The matter is remanded to respondent No.2 for passing a fresh order on its own merits and in accordance with law and to pass a speaking order after giving opportunity to the petitioner. It is made clear that in view of the fact that the matter is remanded to respondent No.2, if any amount is deposited by the petitioner in pursuance of the said order and in view of quashing and setting aside the order dated 9.4.1997, the respondents are not required to refund the amount to the petitioner at present, however, that may be adjusted subject to ultimate outcome of the remand proceedings.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)